



**STATE OF CONNECTICUT**  
DEPARTMENT OF PUBLIC HEALTH  
*Office of Health Care Access*

December 1, 2014

VIA EMAIL ONLY

**IN THE MATTER OF:**

An Application for a Filed Pursuant to  
Section 19a-486 and 19a-639, C.G.S. by:

Notice of Proposed Final Decision  
Office of Health Care Access  
Docket Number: 13-31838-486

**Greater Waterbury Health Network, Inc.  
and Vanguard Health Systems, Inc.**

A Joint Venture between Greater Waterbury  
Health Network, Inc. and Vanguard Health  
Systems, Inc. which will convert Waterbury  
Hospital from a Not-For-Profit Hospital to a For-  
Profit Hospital under Connecticut General Statutes  
§ 19a-486

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Dear Attorneys Connors and Baron:

Enclosed please find a copy of the Proposed Final Decision rendered by Hearing Officer Kevin T. Hansted in the above-referenced case, pursuant to Connecticut General Statutes § 4-179.

OHCA welcomes comments from the public in the above matter until close of business day on December 8, 2014. The final decision will be issued by OHCA on December 17, 2014.

All public comments in this matter should be submitted in writing to Kimberly R. Martone, Director of Operations, Office of Health Care Access, 410 Capitol Avenue, Hartford, CT 06134. Public comments will also be accepted by email to [OHCA@ct.gov](mailto:OHCA@ct.gov).

A handwritten signature in blue ink, reading "Kimberly R. Martone".

Kimberly R. Martone  
Director of Operations

Enclosure  
KRM:swl

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*(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)*

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**Department of Public Health  
Office of Health Care Access  
Certificate of Need Application**

**Proposed Final Decision**

**Applicants:** Greater Waterbury Health Network, Inc. and Vanguard Health Systems, Inc.

**Docket Number:** 13-31838-486

**Project Title:** A Joint Venture between Greater Waterbury Health Network, Inc. and Vanguard Health Systems, Inc. which will convert Waterbury Hospital from a Not-For-Profit Hospital to a For-Profit Hospital under Connecticut's General Statutes § 19a-486

**Project Description:** Greater Waterbury Health Network, Inc. ("GWHN") and Vanguard Health Systems, Inc., ("Vanguard") (herein collectively referred to as "Applicants") seek authorization to establish a joint venture that would result in substantially all of GWHN's assets, including The Waterbury Hospital, being transferred to a for-profit entity under Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-486.

**Procedural History:** On January 22, 2013, the Applicants filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG"), the Certificate of Need ("CON") Determination forms proposing the creation of the joint venture for the not-for-profit to for-profit conversion of Waterbury Hospital and various other health care entities owned or partially-owned by GWHN. The Applicants filed the application for the proposal on May 3, 2013. On June 11, 2013, OHCA and the OAG deemed the application complete, and on July 3, 2013, OHCA and the OAG, jointly published a Summary of the proposal in *The Waterbury Republican*.

On September 24, 2013, the Applicants submitted a request to extend the review period for 90 days after the submission of supplemental information requested by OHCA and the OAG. OHCA and the OAG approved the request for time extension on September 24, 2013. On November 8, 2013, the Applicants requested a second time extension of the 120 day review period and OHCA and the OAG granted the time extension on November 13, 2013. A third time extension was requested by the Applicants on February 5, 2014, and OHCA and the OAG granted same on February 7, 2014.

On August 19, 2014, OHCA and the OAG signed a scheduling agreement with the Applicants that denoted that OHCA and the OAG would make every effort complete their review of this application on or before December 5, 2014 or at the latest no later than December 17, 2014, Thereby, extending the 120 day review period.

On November 12, 2014, OHCA and the OAG signed a revised scheduling agreement with the Applicants extending the 120 day review period to December 17, 2014.

On September 9, 2014, OHCA and the OAG notified the Applicants of the date, time and place of the public hearing. On September 11, 2014, a notice to the public announcing the hearing was published in the *Waterbury Republican*. Thereafter, pursuant to Conn. Gen. Stat. §§ 19a-639a and 19a-486, a public hearing regarding this application was held on October 15, 2014, jointly by OHCA and the OAG.

Commissioner Jewel Mullen designated Attorney Kevin T. Hansted as the hearing officer in this matter. The hearing was conducted in accordance with the provisions of the Uniform Administrative Procedures Act (Chapter 54 of the Conn. Gen. Stat.) and Conn. Gen. Stat. § 19a-639a(f).<sup>1</sup>

By petition dated July 3, 2014, Connecticut Health Care Associates (“CHCA”) requested Intervenor status with full rights of cross-examination regarding the Applicants’ application. Thereafter, CHCA was designated as an Intervenor with full rights of cross-examination.

By petition dated September 5, 2014, the Massachusetts Nurses Association (“MNA”) requested Intervenor status with full rights of cross-examination regarding the Applicants’ application. Thereafter, MNA was designated as an Intervenor with limited rights of participation.

By petition dated October 6, 2014, the National Association for the Advancement of Colored People (“NAACP”) requested Intervenor status with full rights of cross-examination regarding the Applicants’ application. Thereafter the NAACP was designated as an Intervenor with full rights of cross-examination.

The Hearing Officer heard testimony from witnesses for the Applicants and each of the Intervenors and, in rendering this decision, considered the entire record of the proceeding. The record was closed on November 17, 2014.

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<sup>1</sup> Attorney General George Jepsen designated Assistant Attorney General Perry Zin-Rowthorn as the hearing officer in this matter for the OAG.

## Findings of Fact

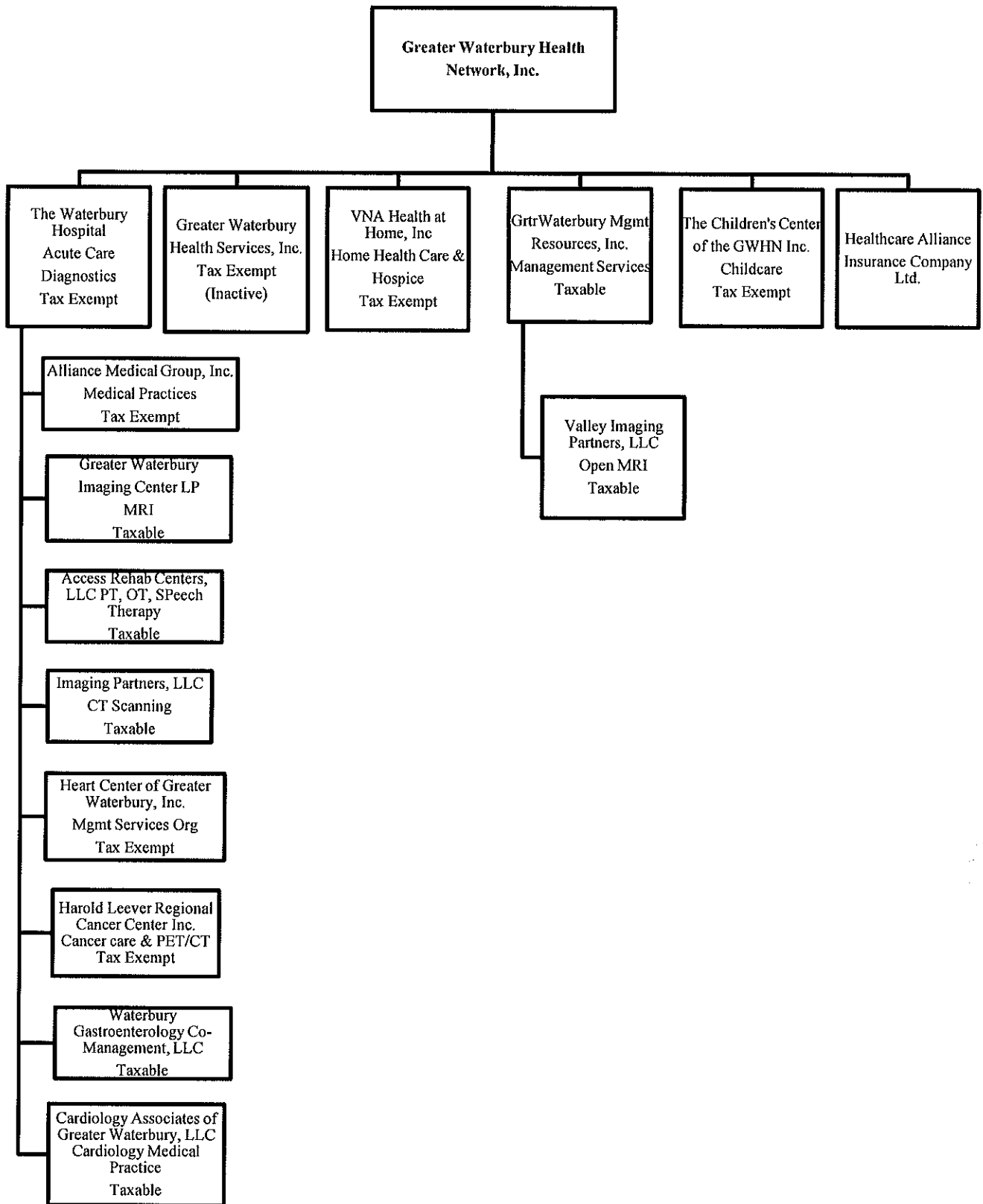
To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc., v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

1. Greater Waterbury Health Network, Inc. ("GWHN") and Vanguard Health Systems, Inc. ("Vanguard" and with GWHN collectively, the "Applicants") are proposing to form a joint venture company, VHS Waterbury Health System, LLC ("VHS Waterbury" or the "JV") pursuant to which GWHN will contribute its assets, including The Waterbury Hospital (the "Hospital"). The assets will be contributed to the JV in exchange for \$45 million and the commitment of the JV to expend not less than \$55 million on capital items and the development and improvement of ambulatory services in the greater Waterbury community within seven years of the effective date ("Closing Date") of the transaction. Ex. D, Applicants' CON Application dated May 3, 2013, pp. 5. The membership of the JV will be structured so that a subsidiary of Vanguard will have an 80% ownership interest in the JV and GWHN's surviving corporation, Waterbury Hospital Foundation (the "Foundation") will have a 20% interest which GWHN will purchase for approximately \$6.32 million. The transaction would convert the Hospital from a non-profit hospital to a for-profit hospital.
2. GWHN is a Connecticut non-stock, 501(c)(3) corporation which hold interests in numerous entities and joint ventures. Its principal asset is the Hospital, which is an acute-care teaching facility which provides a full range of inpatient, outpatient and ancillary services in the City of Waterbury. The Hospital has 357 licensed beds plus 36 bassinets. In fiscal year ("FY") 2012, the Hospital admitted 11,399 inpatients, 965 newborns, had 56,730 Emergency Department visits, and performed 2,544 inpatient surgeries and 4,920 outpatient surgeries. It continues to play a significant role in providing health care to the community to the present day. Ex. D, pp. 6, 8; Hearing Testimony Transcript ("Tr.") of Darlene Stromstad, President and Chief Executive Officer of GWHN and the Hospital, p. 19.
3. Vanguard is a for-profit company based in Nashville, Tennessee. At the time of the initial filing of this Application, Vanguard had almost \$6.0 billion in net revenue and owned and operated 28 acute care and specialty hospitals with complementary facilities and services in Arizona, Illinois, Massachusetts, Michigan and Texas. Ex. D, pp. 11-12. During the review period of this Application, Vanguard was acquired by Tenet Healthcare Corporation ("Tenet").<sup>2</sup>
4. Tenet is a for-profit, investor-owned healthcare services company founded in 1976. As of June 26, 2014, inclusive of the acquisition of Vanguard which occurred on October 1, 2013, Tenet owns and operates 80 acute-care hospitals in 14 states and 189 outpatient centers in 16 states. Ex. CC, p. 1242; Pre-Filed Testimony of Harold H. ("Trip") Pilgrim, III, Senior Vice President for Development of Tenet Healthcare Corporation, p.1. Tenet also operates health plans in some of its markets in the U.S., but has not indicated any intention to do so in connection with the GWHN transaction. Tenet's total net operating revenues for the nine months ending September 30, 2014 was \$12.1 billion, its cash provided by operating activities and total cash and cash equivalents as reported for the same period were \$468 million and \$200 million, respectively. Ex. TTTT, Late File, Ex. 4, pp. 64 & 67.

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<sup>2</sup> As a subsidiary of Tenet, Vanguard remains a separate corporate entity and continues to be one of the Applicants in this proceeding. Tenet, although not a party to the transactions under review, has appeared in this proceeding and is subject to this decision.

5. Applicants supplied an organizational chart depicting GWHN and its affiliates prior to the proposed transaction that depicts the organization as follows:



Ex. D, p. 7.

6. All of GWHN's assets with the exception of The Children's Center of the GWHN Inc. ("CCGWHN") and Healthcare Alliance Insurance Company ("HAIC") will be contributed to the JV. These include the Hospital, Alliance Medical Group, Inc., the Greater Waterbury Imaging Center Limited Partnership, Access Rehab Centers, LLC, Imaging Partners, LLC, Valley Imaging Partners, LLC, Waterbury Gastroenterological Co-Management Company, LLC (class H members), and Cardiology Associates of Greater Waterbury, LLC. The Hospital also has 50% interests in two joint ventures with the other acute care hospital in Waterbury, St. Mary's Hospital ("SMH"), that will be contributed to the JV: The Harold Leever Regional Cancer Center, Inc. and the Heart Center of Greater Waterbury, Inc. Ex. D, pp. 6-8. These non-hospital entities are collectively referred to herein as the "Hospital Affiliates."

Elements of the Proposed Transaction

7. In order to carry out the transaction, the Applicants, either directly or through certain affiliates, propose to enter into three separate agreements: (i) a Contribution Agreement; (ii) an Operating Agreement for the joint venture limited liability company, VHS Waterbury, that will own and operate the Hospital post-closing; and (iii) a Management Services Agreement whereby a wholly owned subsidiary of Tenet, VHS Waterbury Management Company, LLC ("VHS Management"), will provide certain financial, technical, managerial and administrative support services to the Hospital and the Hospital Affiliates. Ex. D, Exs. 1-3.
8. The Contribution Agreement provides for GWHN to contribute substantially all of its assets to the capital of the JV. The purchase price of \$45 million is subject to a potential working capital adjustment to the extent that the net book value of GWHN's net working capital is greater or lesser than \$6.8 million as of the Closing Date, minus the agreed upon value of certain liabilities assumed by the JV such as asbestos abatement expenses and pension liability among others. GWHN will purchase its 20% membership interest in the JV for approximately \$6.32 million and receive the amount of the Vanguard contribution in cash. Ex. D, pp.13; Contribution Agreement, Ex. D, Ex. 1, p. 85; Pre-Filed Testimony of Trip Pilgrim, p.4.
9. The projected sources of income for the JV are as follows:

Name of Member	GWHN	Vanguard
Primary Capital	\$6,320,000	\$25,282,000
Contribution Percent Share	20%	80%

Ex. D, p. 13.

10. Set forth below is a listing of GWHN's contributed assets to the JV as well as a listing of the assets excluded from the transaction and the liabilities GWHN will retain post-closing:

<b>GWHN Contributed Assets</b>	<ul style="list-style-type: none"><li>• All rights, title, and interest in and to the Facilities,<sup>3</sup> including, without limitation, the Hospital, its business operations, and other related health care assets.</li><li>• Equipment.</li><li>• Net Working Capital, defined as accounts receivable, inventory and supplies, any prepaid expenses and deposits that have continuing value to the JV, less accounts payable and accrued expenses.</li><li>• Patient, medical, personnel and other records of the Facilities.</li><li>• Licenses, permits and trade names.</li><li>• Certain assumable contracts of the Facilities.</li><li>• Interests in subsidiaries and affiliates, other than CCGWHN and HAIC.</li><li>• Interests in all property arising or acquired in the ordinary course of the operation of the business between the date of execution of the letter of intent and the closing.</li><li>• All other property, whether tangible or intangible, of every kind, character, or description owned by GWHN and used or held for use in the operation of the Facilities.</li></ul>
<b>GWHN Excluded Assets</b>	<ul style="list-style-type: none"><li>• Cash and cash equivalents.</li><li>• Board-designated, restricted, and trustee-held or escrowed funds (such as funded depreciation, debt service reserves, working capital trust assets, and assets and investments restricted as to use), beneficial interests in charitable trusts, and accrued earnings on all of the foregoing.</li><li>• Prepaid expenses not assumed by the JV.</li><li>• All insurance proceeds arising in connection with the operation of the Assets or the Facilities for</li></ul>

<sup>3</sup> The term Facilities is defined in the Contribution Agreement as the Hospital and GWHN's related health care assets.  
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	<p>periods prior to closing to the extent that all damage to the Assets has been repaired.</p> <ul style="list-style-type: none"> <li>• All amounts due or to become due to GWHN from the Medicare, Medicaid or other payor programs in respect of cost report periods ended on or prior to closing.</li> <li>• Interests in CCGWHN and HAIC.</li> </ul>
<b>GWHN Retained Liabilities</b>	<ul style="list-style-type: none"> <li>• Debt.</li> <li>• Claims or potential claims for workers' compensation, medical malpractice or general liability relating to events asserted to have occurred prior to closing.</li> <li>• Liabilities or obligations associated with or arising out of any of the GWHN excluded assets.</li> <li>• Liabilities or obligations with respect to cost report periods prior to closing arising under Medicare, Medicaid or other payors.</li> <li>• Certain pension plan obligations.</li> </ul>

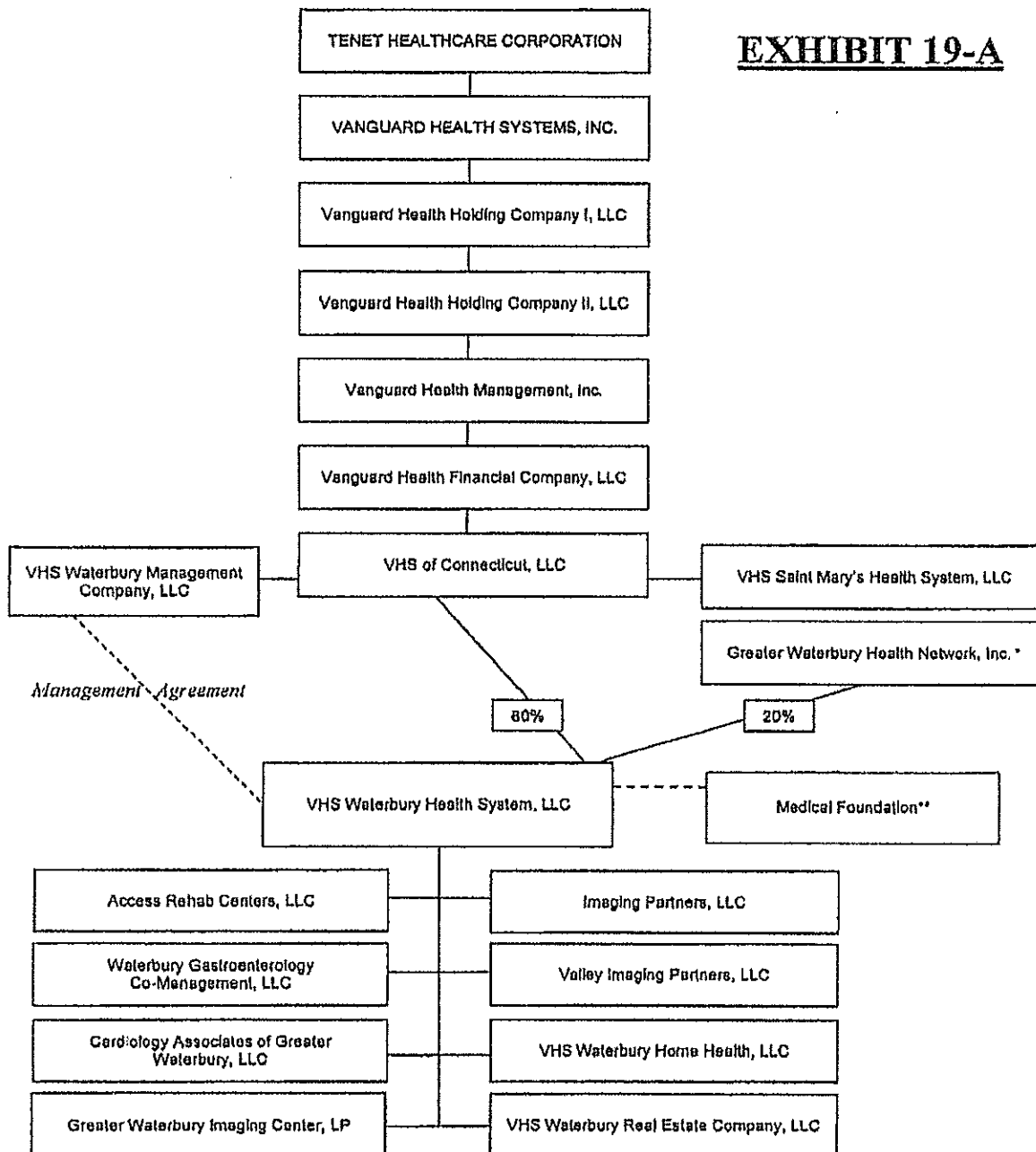
Ex. D, pp. 15-16.

11. In connection with the transaction, the JV will assume certain pension liabilities and GWHN will retain others. Specifically, on or prior to the Closing Date, GWHN will freeze the Waterbury Hospital Cash Balance Retirement Plan ("Plan"). The JV will become the new sponsor of the Plan. The JV will become a participating employer in the New England Health Care Employees Pension Fund and will be responsible for all contributions with respect to employees covered by the Fund (the "Fund"). Conversely, GWHN intends to withdraw as participating employer in the same Fund. There is an expected withdrawal liability of approximately \$27.7 million (or \$3.4 million annually) that will remain GWHN's responsibility. Ex. F, Applicants' June 11, 2013 Responses to Completeness Questions, p. 975; Ex. KK, Applicants' August 18, 2014 Responses to Attorney General's First Set of Interrogatories and Requests for Production, p. 1897.
12. According to the Applicants, Vanguard is making its capital contribution in cash, and will not be taking on any of the Hospital's debt. The Hospital will be able to use that cash to retire its debt obligations and the distressed financial situation the Hospital is now facing will be remedied, but not at the expense of Vanguard's ability to meet its other commitments in Waterbury and elsewhere. Applicants also state that Tenet's financial resources, capital and access to capital will allow the Hospital to purchase new technology, upgrade the physical plant and attract more skilled physicians. Tenet's extensive experience and expertise will allow the Hospital to take advantage of practices that will reduce costs and improve



care by sharing Tenet's best practices. Ex. JJJ, Applicants' Responses to Office of Health Care Access Interrogatories Dated September 10, 2014, pp. 1955, 1968; Pre-Filed Testimony of Trip Pilgrim, p.5.

13. Under the Operating Agreement, the JV will commit to expend not less than \$55 million on capital items and on the development and improvement of ambulatory services in the Greater Waterbury community over a period of seven years. According to the Applicants, in connection with Tenet's proposed asset purchase of SMH, an additional \$30 million in capital expenditures – or a total of \$85 million – will be expended over seven years in the Greater Waterbury region. Ex. D, pp.13 and Ex. D, Ex. 1, p. 134; Pre-Filed Testimony of Trip Pilgrim, p.5.
14. Vanguard is acting as a source of financing for the capital commitment set forth in the Operating Agreement by providing a \$55 million line of credit to the JV to be drawn against as needed to fund working capital and various capital expenditures. The plan is that cash from operations will be used first, and if there is not sufficient cash for operations, then the line of credit will be used to fund the capital commitment. Ex. F, p. 972; Tr., Testimony of Erik Wexler, Chief Executive Officer for the Northeast Region of Tenet Healthcare, pp. 144-145; Tr., Testimony of Wilson Robinson, pp. 144-145.
15. There is a caveat to the \$55 million capital commitment. The VHS Waterbury Operating Agreement states that notwithstanding the commitment, "in the event that any legal requirement is enacted or imposed after the Closing Date that discriminates against, or adversely affects a disproportionate number of, for-stock hospitals or other for-profit health care entities, or causes the Company to suffer a material decline in consolidated earnings before interest, taxes, depreciation and amortization on a consolidated basis, then the Company shall be relieved of its obligation to provide the above capital commitment and shall be required to consult with the Board of Trustees to determine an alternate mutually agreeable capital commitment of the Company that is reasonable and appropriate in light of the changed circumstances caused by the new legal requirement." Ex. D, p. 159.
16. Under the Management Agreement, the JV will engage VHS Management to manage the day-to-day operations of the Hospital and the Hospital Affiliates. Under the Management Agreement, VHS Management will provide a number of services including, without limitation, (i) corporate oversight and operation support; (ii) reimbursement services; (iii) purchasing and supply chain services; (iv) business planning; (v) development support; (vi) quality and resource management support; (vii) human resources support; (viii) facility planning; (ix) certain legal services; (x) risk management support; (xi) compliance services; (xii) real estate services; and (xiii) information services support. The JV will pay VHS Management a management fee equal to two percent of the consolidated net revenues of the JV. The Fairness Evaluation prepared for Applicants by Principle Valuation, dated May 1, 2013, describes an industry norm of management services fees in the range of 2-5% of net revenues collected. Ex. D, pp 14; Amended and Restated Operating Agreement pp. 173-174; Ex. F, p. 971.
17. Applicants supplied an organizational chart of the JV following the proposed transaction as set forth below (the chart also depicts the JV's relationship to St. Mary's Health System should Tenet's proposed asset purchase of that organization take place):



\*To be merged into Waterbury Hospital with Waterbury Hospital as the surviving entity and renamed Waterbury Hospital Foundation, Inc.

\*\*The parties will work to restructure GWHN's medical foundation, Alliance Medical Group, Inc. in a manner consistent with Public Act No. 14-168 by a transfer of the assets and liabilities of Alliance Medical Group, Inc., to a new medical foundation, the sole member of which will be Tenet or an affiliate of Tenet.

Ex. KK, p. 1930

18. Following the closing of the proposed transaction, Vanguard intends to transfer its 80% interest in the JV to a to-be-formed subsidiary of a regional provider organization, Regional Provider, LLC ("RPO"). This RPO will be a joint venture between Tenet and Yale-New Haven Health Services Corporation ("YNHHSC"). A Tenet affiliate will own 80% and YNHHSC will own 20% of the RPO. According to the Applicants, an alliance with YNHHSC will benefit the Hospital by allowing access to YNHHSC's clinical protocols, evidenced-based practices, subspecialists and clinical intellectual property. Tenet also

intends to transfer its ownership interest in SMH to the RPO. According to the Applicants, YNHHSC will not be involved in the day to day operation or management of either hospital. Ex. JJJ, pp. 1956-1957; Pre-Filed Testimony of Harold H. ("Trip") Pilgrim, III, p.8; Tr., p. 79.

### Proposed Governance Structure

19. Following the closing of the proposed transaction, the JV will be governed by a board of directors (the "JV Board") that will have oversight and ultimate authority over the affairs of the JV. The JV Board will be composed of 12 Board members, 6 of whom will be elected or appointed by GWHN and 6 of whom will be elected or appointed by Vanguard. The JV Board's responsibilities include oversight of and/or responsibility for: the Hospital Board of Trustees; development of the JV's strategic plans; adopting corporate vision, mission and values statements and developing policies and monitoring progress toward strategic goals; operating and capital budgets and facility planning; assuring compliance with Joint Commission accreditation and criteria; and fostering community relationships and identifying service and education opportunities. Ex. D, pp. 9-10; Amended and Restated Operating Agreement p. 165.
20. The JV will operate in accordance with the Community Benefit Standard required of tax-exempt hospitals (as set forth in IRS Revenue Ruling 69-545), including the acceptance of all Medicare and Medicaid patients, acceptance of all emergency patients without regard to ability to pay, maintenance of an open medical staff, and promotion of public health, wellness and welfare in the community through the provision of health care at a reasonable cost. Representatives of Tenet testified that this commitment will endure even if GWHN is not a party to the JV provided there is no change to the standard under federal tax law. Ex. D, p. 6, 52, 57-58; Pre-filed Testimony of Erik Wexler, p. 5.
21. The JV Board will appoint a twelve-member local Board of Trustees ("Local Board") to oversee the operating activities of the Hospital and the Hospital Affiliates (collectively, the "Facilities"). At least six of the members of the Local Board will be physicians from the active medical staff of the Hospital; the remainder of the members of the Local Board will be local community leaders. The Local Board will be responsible for (i) adopting a vision, mission, and values statement for the Facilities; (ii) monitoring performance improvement at the Facilities; (iii) granting medical staff privileges; (iv) assuring medical staff compliance with the requirements of The Joint Commission; (v) providing advice and consultation regarding physician recruitment efforts; and (vi) fostering community relationships and identifying service and education opportunities. Ex. D, pp. 13-14; Amended and Restated Operating Agreement p. 169; Ex. F, p. 968.
22. After the closing, GWHN will be merged into the current non-profit Waterbury Hospital entity with the latter being the surviving entity. This entity will be restructured and renamed as the Foundation. It will be a tax exempt 501(c)(3) organization, operating as a public charity. The Foundation will file, for tax purposes, as a hospital pursuant to Internal Revenue Code Section 170(b)(1)(a)(iii). As long as the JV operates the Hospital in accordance with the IRS community benefit standard, income from the JV will retain its "character" as program related/exempt function income when received by the Foundation from the JV and will be tax exempt. According to the Applicants, the provisions of the JV's operating agreement accord the tax exempt member of the JV sufficient control over the JV to ensure that the JV

will operate the combined hospitals in a manner consistent with the community benefit standard. Ex. D, pp. 42-43.

23. The Foundation will be governed by a Board of Directors consisting of 9 to 12 members. The initial Foundation Board will be nominated by GWHN's Governance Committee and elected by the GWHN's Board of Directors. Applicants anticipate that committees will be established to oversee the work of the Foundation Board and the Foundation. In addition to a Board of Directors, the Foundation will be served by a community advisory board, composed of at least 15 members; the community advisory board that will advise the Board of Directors on community needs will be drawn from many sectors of the greater Waterbury community. Ex. D, p. 42-43; Tr., Testimony of Carl Contadini, Chairman of the Board of the Waterbury Hospital and the Greater Waterbury Health Network, p. 32.
24. In addition to its 20% ownership interest in the JV, the Foundation's assets will also include short term investments, marketable securities and certain assets whose use is limited by donors and/or held in trust. The Foundation will continue to receive revenue on an ongoing basis as a result of being the beneficiary of various trusts and its 20% equity position in the JV. Ex. D, p. 42.
25. The total amount of net Foundation assets before and after adjustments to the purchase price for GWHN's assets pursuant to the Contribution Agreement will be \$68 million and \$90 million, respectively. Cash received by the Foundation at closing will be \$25 million. Ex. TTT, Late File, Ex. 5, p. 132.
26. The main responsibilities of the Foundation will be:
  - a. To participate as the 20% owner of the JV;
  - b. To manage the charitable assets remaining and to receive the investment income of those charitable assets held by third parties and restricted to use by the Hospital;
  - c. To ensure that the JV conducts hospital operations in a manner consistent with the "community benefit standard" set forth in IRS Revenue Ruling 69-545;
  - d. To manage remaining assets and liabilities; and
  - e. To support charitable health related activities in the community in addition to those that will continue to be provided through the JV's operation of the Hospital in accordance with the community benefit standard.
  - f. To provide economic support for health care by accessing grants and using these funds to purchase services from health care providers.

Ex. D, p. 42; Tr., Testimony of Carl Contadini, pp. 32-33.

#### The Hospital's Financial Challenges

27. In addition to the City of Waterbury, the Hospital's primary and secondary service area towns include Beacon Falls, Bethlehem, Cheshire, Middlebury, Morris, Naugatuck, Oakville, Oxford, Plantsville, Plymouth, Prospect, Seymour, Southbury, Southington, Terryville, Thomaston, Torrington, Watertown, Wolcott and Woodbury. Ex. D, p. 47.

28. While several communities in GWHN's service area are relatively affluent, the City of Waterbury struggles with high unemployment and high poverty. As a result, GWHN serves a large Medicaid and uninsured population. In FY 2012, Medicaid recipients accounted for more than 22% of inpatients and 23% of outpatients at the Hospital. Uninsured individuals accounted for nearly 2% of the Hospital inpatients and nearly 4% of outpatients. Central Waterbury is designated by the Health Resources and Services Administration as a Medically Underserved Area as well as a Health Professionals Shortage Area. The population in Waterbury consists of:

- a. young adults who may be full-time students, single, unemployed or have no permanent full-time jobs and therefore, likely to be uninsured;
- b. a disproportionate share of residents who are over 75 years old and live in the city of Waterbury who may be inclined to suffer from chronic diseases that need management;
- c. minorities that have high hospitalization and uninsured rates;
- d. residents who are less likely to have a college degree or higher, to be skilled professionals or employed;
- e. a labor force that has a comparably higher tendency to work in service, production, transportation and material moving industries that are seasonal, temporary or part-time in nature;
- f. people who earn less than the statewide average per capita or household income;
- g. a population that has a high incidence of hospitalizations that could have been prevented if residents had adequate access to community health services; and
- h. a federally medically and primary care underserved population.

Ex. D, pp. 52, 206.

29. GWHN experienced five consecutive years of losses from 2006 through 2011, ranging from \$2.5 million to \$17.8 million. GWHN's ability to achieve its mission and fulfill its long range plan has been impeded by limited access to capital, inadequate reimbursement from third party payors, aging facilities, an unfavorable payor mix and an accrued pension liability. Ex. D, p. 20.

30. GWHN defaulted in its bond covenants in 2009. As part of the forbearance arrangement with its bondholders, GWHN and the Hospital entered into an agreement with PricewaterhouseCoopers, LLP ("PwC") to identify top challenges and risks for GWHN, define operational improvements, define revenue cycle improvements and set physician initiatives. Ex.D, p.21.

31. Top challenges identified by PwC included: risks associated with IT implementation; skill set of management across the organization; ongoing capital needs and sufficient access to capital for strategic investments; health care reform and declining reimbursements. In response, the GWHN's Board realigned the executive team in 2011. In the first six months, this new team reduced expenses by \$6 million, instituted service improvements, improved core measures and made modest capital improvements as a result of the savings gained by successfully refinancing its tax exempt debt. However, these improvements were not enough to secure the long-term resources required to sustain the current health system. Ex. D, p. 21.

32. In addition, in 2010 Kaufman Hall, a well-known health care advisor, was retained to identify near-term capital needs. Kaufman Hall identified over \$50 million in capital improvements required over 5 years

to keep the Hospital operational. This is money GWHN claims it does not have and cannot secure in the open market. Ex. D, pp. 21-22.

33. The age of the Hospital's physical plant has continued to increase from 2011 through 2013 as shown below:

**Average Age of Plant for Waterbury Hospital for FYs 2011, 2012 & 2013:**

Fiscal Year	FY 2011	FY 2012	FY 2013
Average Age of Plant	26.40	27.33	30.15

Source: Office of Health Care Access Hospital Reporting System, Report 185.

34. GWHN's President and CEO testified that changes in reimbursement, driven mainly by federal health care reform and the shift of payments away from hospitals to address primary care and other health care priorities, result in a projected reduction of reimbursement of \$95 million for the Hospital over 10 years according to data provided by the Connecticut Hospital Association. She further testified that for FY 2015 alone, the Hospital was projected to receive \$9.7 million less in reimbursement from Medicare and Medicaid than it did in FY 2014 for providing the equivalent amount of treatment to patients covered under these government-sponsored health programs. Tr., Testimony of Darlene Stromstad, p. 21-22.
35. According to GWHN, it has lost a total of \$42 million over the last 10 years. Tr., Testimony of Darlene Stromstad, p. 21. Set forth below is GWHN's Operating Income and Revenue over Expenses Projections for FYs 2014-2017 which estimates cumulative losses of more than \$35 million over the four-year projection period:

DESCRIPTION	Year-to-Date	Projections				
	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	Variance*
	As of (8/31/14)	without CON	without CON	without CON	without CON	FY2014-FY2017
<b>Statement of Operations Summary</b>						
Income/(Loss) From Operations	\$205,628	(\$6,905,950)	(\$13,470,793)	(\$13,101,555)	(\$12,719,705)	(\$5,813,755)
Excess/(Deficiency) of Revenue Over Expenses	(\$4,741,875)	(\$4,311,364)	(\$10,850,261)	(\$10,454,818)	(\$10,046,500)	(\$5,735,136)

\*Calculated by OHCA

EX.JJ, p.1871; Ex.JJJ, p.2154.

Decision to Partner with Vanguard

36. Continued financial challenges, coupled with the consultants' assessment of capital need and difficult prospects for securing such capital, have caused GWHN's Board to reconsider an independent hospital strategy. In recent years, GWHN has examined transactions with not-for-profit and for profit, national, and local systems, including a failed joint venture with LHP Hospital Group, Inc. and SMH (the "LHP Joint Venture") that was terminated in late 2012. Ex. D, p. 21-22; Pre-Filed Testimony of Carl Contadini, p. 2171.
37. Shortly after the LHP Joint Venture terminated, the Board directed Cain Brothers, an investment banking firm specializing in the health care industry, to solicit proposals from a select group of

organizations interested in a strategic relationship with GWHN. The GWHN Board confirmed the following objectives as a guide for evaluating potential partners:

- a. Ensure the Hospital remains a viable health care entity, providing the highest safety and quality health care services to the Greater Waterbury community for the long-term;
- b. Provide sufficient capital to meet deferred, current and future capital needs for the Hospital's physical plant to ensure state of the art health care delivery services through an upgrade of facilities, equipment and technology;
- c. Continue a meaningful local governance presence at the Hospital that represents both physicians and the Greater Waterbury community;
- d. Develop and implement an ambulatory service strategy to best position GWHN for a successful transition in changing health care delivery methods;
- e. Develop and implement regional tertiary care relationships for the betterment of health care delivery to the community;
- f. Deploy repeatable and scalable tools and clinical care services to continually improve the health of the community;
- g. Enhance the Hospital's medical staff by attracting and retaining physicians through access to available capital partner funds to support such growth;
- h. Maintain high satisfaction scores by patients, physicians, employees and volunteers; and
- i. Continue charitable care delivery and funding.

Ex. D, p. 23, 386; Tr., Testimony of Carl Contadini, p. 25.

38. The Applicants testified that two proposals were submitted in response to a Confidential Information Memorandum that was provided to the parties that expressed the most interest in a partnership and the GWHN board unanimously chose Vanguard's application. GWHN chose Vanguard based on Vanguard's:

- a. Culture of maintaining local health care;
- b. Ability to invest in technology, facilities and outpatient growth;
- c. Record of strong academic and physician relationships;
- d. Focus on quality, safety and best practices;
- e. Experience in population health management.

Tr., Testimony of Darlene Stromstad, pp. 22-23.

39. According to the Applicants, entering into the JV with Vanguard would provide the following benefits:

- a. Vanguard's capital and access to capital will mean that the Hospital will have the financial resources to purchase new technology, upgrade the physical plant and attract more skilled physicians. Ex. JJJ, p. 1955.
- b. Greater efficiencies and economies of scale that will reduce costs. Ex. D, p. 18-19; Pre-Filed Testimony of Trip Pilgrim, p. 3.
- c. Reduced expenses, retired debt and the necessary resources to fund its pension obligations. Ex. D, p. 18.
- d. Enhanced coordination of health care in the region. Pre-Filed Testimony of Trip Pilgrim, p. 8.
- e. Ability of GWHN to maintain input in governance of the Hospital. Tr., Testimony of Carl Contadini, p. 29.

#### Current Utilization of Health Care Services

40. Besides the Hospital, there are two other acute care hospitals in the service area affected by this Application: SMH and Charlotte Hungerford Hospital ("Hungerford"). The tables below identify the service lines for each of the providers and their utilization:



HOSPITAL SERVICE LINES

HOSPITAL	Inpatient Cardiac Angioplasty	Outpatient Cardiac Angioplasty	Inpatient Chemotherapy	Outpatient Chemotherapy	CT Scanning	Diagnostic Cardiac Catheterization	Emergency Department	Satellite Emergency Department	Inpatient Hospice	Lithotripsy	Linear Accelerator	Inpatient Maternity	Outpatient Maternity	Inpatient Medical Oncology	Outpatient Medical Oncology	Mental Health Clinic	MRJ
Hungerford			x	x	x		x	x		x	x	x	x	x	x	x	x
St. Mary's	x	x	x	a	x	x	x		b	x	a	x	x	x	a	x	x
Waterbury	x	x	x	a	x	x	x		x	x	a	x	x	x	a	x	

HOSPITAL	Open Heart Surgery	Inpatient Pediatrics	Outpatient Pediatrics	PET/PET-CT	Outpatient Primary Care	Inpatient Radiation Oncology	Outpatient Radiation Oncology	Inpatient Rehabilitation	Outpatient Rehabilitation	Ambulatory Chemical Detox	Substance Abuse Day/Evening Treatment	Inpatient Substance Abuse Treatment	Substance Abuse - Medical Triage	Outpatient Substance Abuse Treatment	Surgical Services	Inpatient Surgical Oncology	Outpatient Surgical Oncology
Hungerford		x	x	x	x	x	x	x	x				x		x	x	x
St. Mary's	x	c	x	a	x		a		x		x	x	x	x	x	x	x
Waterbury	x			a	x		a	x	x	x	x	x	x	x	x	x	x

<sup>a</sup>Provided by a jointly held affiliate, The Harold Leever Regional Cancer Center

<sup>b</sup>Provided by Vitas

<sup>c</sup>Provided by Connecticut Children's Medical Center

Source: 2012 Statewide Health Care Facilities and Services Plan, Office of Health Care Access

The table below provides the most recent inpatient utilization statistics available for the Hospital, Saint Mary's and Hungerford.

### UTILIZATION STATISTICS FY2011 EXCLUDING NEWBORNS

	HOSPITAL		
	<u>WATERBURY</u>	<u>SAINT MARY'S</u>	<u>HUNGERFORD</u>
PATIENT DAYS	56,643	53,814	26,634
DISCHARGES	11,800	11,626	6,144
AVERAGE DAILY CENSUS	155.2	147.4	73.0
AVERAGE LOS	4.8	4.6	4.3
STAFFED BEDS	181	172	78
% OCCUP. STAFFED BEDS	86%	86%	94%
AVAILABLE BEDS	248.0	174.0	109.0
% OCCUP. AVAIL. BEDS	63%	85%	67%
LICENSED BEDS	357	347	109
FTE's	1,512.7	1,237.9	744.3

Source: OHCA Hospital Reporting System (HRS) Reports 400 & 450

41. The Hospital is a major provider of inpatient services to the community. Complete outpatient utilization data is not publicly available in Connecticut. The following tables provide an inventory of providers of outpatient services similar to those provided by the Hospital. The source for all three tables is the 2012 OHCA Statewide Health Care Facilities and Services Plan.

AMBULATORY SURGERY CENTERS													
		ENT Surgery	Gastroenterology	General Surgery	Gynecologic Surgery	Neurosurgery	Ophthalmic Surgery	Oral Surgery	Orthopedic Surgery	Pain Management	Plastic Surgery	Podiatric Surgery	Urology
Endoscopy Center of Northwest Connecticut, LLC	Torrington	x											
Litchfield Hills Surgery Center	Torrington								x	x			
Naugatuck Valley Endoscopy Center, LLC	Waterbury	x											
Waterbury Outpatient Surgery Center	Waterbury						x				x		

## OUTPATIENT BEHAVIORAL HEALTH PROVIDERS

Name	Town
Catholic Charities, Inc.	Torrington
Catholic Charities, Inc.	Waterbury
Catholic Charities, Inc.	Waterbury
Central Naugatuck Valley HELP, Inc.	Waterbury
Central Naugatuck Valley HELP, Inc.	Torrington
Christian Counseling Connection	Torrington
Community Health & Wellness Center of Greater	Torrington
Community Health Center, Inc.	Waterbury
Community Mental Health Affiliates, Inc.	Torrington
Community Mental Health Affiliates, Inc.	Waterbury
Connecticut Counseling Centers, Inc.	Waterbury
Connecticut Junior Republic, Inc.	Waterbury
Connecticut Renaissance, Inc.	Waterbury
Family Intervention Center, Inc.	Waterbury
Family Services of Greater Waterbury, Inc.	Naugatuck
Family Services of Greater Waterbury, Inc.	Waterbury
Life Source Center, Inc.	Southington
McCall Foundation, Inc.	Torrington
Midwestern Connecticut Council on Alcoholism, Inc	Waterbury
Staywell Health Care, Inc.	Waterbury
Wellmore, Inc.	Waterbury
Wellspring Foundation, Inc.	Bethlehem

<b>HOME HEALTH CARE AGENCIES</b>	
<b>Name</b>	<b>Town</b>
Affinity Care Hospice, LLC	Naugatuck
All About You Home Care	Naugatuck
All Pointe Homecare, LLC	Cheshire
Hamlett Health Services, LLC	Waterbury
Huemanity Home Care of Connecticut, LLC	Southington
Naugatuck Visiting Nurses Association	Naugatuck
Quality Visiting Nurses, LLC	Watertown
Synergy Home Health	Cheshire
Vitas Healthcare Corporation Atlantic	Middlebury
VNA Health at Home, Inc.	Watertown

Ex. D, pp. 63-6

42. According to Applicants, the JV does not currently propose new facilities or services that will result in unnecessary duplication of existing or approved health care services or facilities. Ex. D, p. 67; Tr., Testimony of Erik Wexler, p. 92.

Capital Needs, Community Health Needs and Charity Care

43. GWHN has identified the following priority capital projects:

- a. Replacement of “workhorse equipment” such as CT scans and X-ray machines;
- b. Investment in an outpatient service strategy that includes ambulatory clinics, primary care clinics, chronic care clinics, and rehab centers;
- c. Renovation of certain medical and surgical areas.

Tr., Testimony of Darlene Stromstad, pp. 81-82; Tr., Testimony of Trip Pilgrim, pp. 89-90.

44. After the public hearing in this matter, Applicants submitted a capital plan for priority projects with respect to facility upgrades on the Hospital's main campus and equipment purchases/replacements with approximate costs of \$15.3 million over the next 36 months. The capital plan also called for development of outpatient centers and information technology capabilities for which no timeline or projected capital costs were assigned. Late File Exhibits 2 and 3.
45. Applicants testified that without the approval of the proposed transaction, the GWHN Board does not have any other plans in place to raise the required funding to implement critical capital projects. Tr., Testimony of Darlene Stromstad, p. 82
46. According to the Applicants, following the Closing Date, the JV Board, Hospital leadership and community physicians will engage in an assessment and planning process for the prioritization of capital investments that best secure the Hospital's future and meets the changing needs of the Greater Waterbury community. Ex. D, p. 20.
47. The Hospital participates in the Greater Waterbury Community Health Needs Assessment which is a collaboration of community organizations whose goal is to identify community health priorities within the Greater Waterbury area. These needs include reducing barriers to care, including costs, the provision of mental health and substance abuse services, addressing obesity, and tobacco use. According to Applicants, as part of the agreement between the parties, the JV will continue the Hospital's involvement in and commitment to the plan and its principles. Tr., Testimony of Darlene Stromstad, pp. 100, 103.
48. The Waterbury Branch of the NAACP was granted intervenor status in this proceeding and identified several critical social and health issues for the Waterbury community, including a community that has one of the highest rates in Connecticut of children living at 200 percent of the federal poverty guidelines, a city with one of the highest unemployment rates in Connecticut, with rates near 13 percent as of 2014, a city with low birth weight babies, averaging approximately 10 percent of all the births, and a city with one of the highest teen pregnancy rates, which speaks to how critical the health status issues of the community must be part of the outcome strategic plan. Ex. FFF, NAACP Petition Requesting Legal Status in Proceeding dated October 2, 2014 from James E. Rawlings, Health Chair of the CT State Conference of Branches of the NAACP.
49. According to the Applicants, the JV will also retain and continue to follow charity care and uncompensated care policies at least as favorable to patients as those maintained by GWHN. Ex. D, p. 52, 57; Ex. JJJ, pp. 1961-1964.
50. Vanguard charity care and indigent policies will not be implemented as Tenet has acquired Vanguard and is currently transitioning legacy-Vanguard facilities to Tenet's policy. As Tenet's policy currently does not provide benefits for over 300% the federal

poverty limit ("FPL"), Tenet would maintain GWHN's current charity care policy at the Hospital. GWHN's charity care policy is more favorable than Tenet's charity care policy. As such, the Hospital will adopt GWHN's charity care policy. Ex. CC, p. 1237.

51. While the Tenet charity care policy only applies to those under 300% of the FPL, other financial benefits are provided for both the uninsured and insured above this threshold. In addition to what the Hospital currently provides, the JV will provide financial assistance to insured patients who suffer from financial hardship on a case by case basis – particularly the under-insured patients who have exhausted their benefits or those whose out of pocket expenses exceed 10% of their household income. Ex. CC, p. 1237.
52. Tenet also provides other benefits to the communities it serves, not specified in the current Hospital charity and indigent care policies. These benefits to the community will be adopted by the Hospital and examples include:

- a. patients are not required to apply for Financial Assistance; and
- b. patients can provide verbal attestation for household size and other key nonfinancial aspects.

Ex. CC, p. 1238.

53. In the event Tenet adopts a new company wide policy regarding charity and indigent care, the future Tenet policy would be compared against the current charity care policy at the Hospital. If the future Tenet policy would provide greater benefit to the community, the future Tenet policy would be adopted at the Hospital. Otherwise, the current Hospital policy would remain in effect. Ex. CC, p. 1237.
54. According to the Applicants, as a result of the JV, the community will continue to have access to quality care, the JV will treat individuals regardless of their ability to pay and will continue to provide the services currently offered by the Hospital, including those provided through its clinics, psychiatric programs and emergency department. The JV will accept all existing contracts with payors. With respect to Medicaid recipients, Applicants state that recipients and indigent person will have the same if not better access to high quality services. Applicants state that this will be achieved through the following:
- a. An increase in ambulatory access points in the Waterbury region;
  - b. Access to Tenet's quality and patient safety programs that utilize coordinated initiatives targeting discharge planning, care management, service line planning and emergency preparedness;
  - c. Utilization of Tenet's Clinical Councils, which are representative groups of physicians, nurses and other clinical staff;
  - d. Education on health insurance coverage options and assistance in enrolling in coverage, including insurance exchanges and Medicaid enrollment.

Ex. D, pp. 51-52; Ex. JJJ, pp. 1960-1961.

55. The following tables represent the current and projected patient population mixes for the Hospital if the CON proposal is approved:

**INPATIENT POPULATION EXCLUDING NORMAL  
NEWBORNS:**

<b>PAYOR</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY2016</b>
Medicare	49.8%	48.3%	51.7%	51.7%	51.7%
Medicaid	23.5%	24.9%	24.1%	24.1%	24.1%
Champus	0.1%	0.2%	0.1%	0.1%	0.1%
<b>Total Government</b>	<b>73.3%</b>	<b>73.4%</b>	<b>75.9%</b>	<b>75.9%</b>	<b>75.9%</b>
Commercial	24.1%	24.3%	21.9%	21.9%	21.9%
Uninsured	1.8%	1.6%	1.4%	1.4%	1.4%
Workers	0.7%	0.7%	.9%	.9%	.9%
<b>Total Non-Government</b>	<b>26.7%</b>	<b>28.6%</b>	<b>24.2%</b>	<b>24.2%</b>	<b>24.2%</b>
<b>Total Payor Mix</b>	<b>100%</b>	<b>100%</b>	<b>100</b>	<b>100%</b>	<b>100%</b>

*Ct DPH Office of Health Care Access Acute Care Hospital Inpatient Discharge Database*

*\*Discharges assigned MS-DRG 795*

**OUTPATIENT POPULATION:**

<b>PAYOR</b>	<b>FY 2012</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY2016</b>
Medicare	37.5%	37.8%	37.8%	37.8%
Medicaid	23.1%	25.3%	25.3%	25.3%
Champus	0.2%	.08%	.08%	.08%
<b>Total Government</b>	<b>60.8%</b>	<b>63.1%</b>	<b>63.1%</b>	<b>63.1%</b>
Commercial	34.8%	31.8%	31.8%	31.8%
Uninsured	3.6%	4.3%	4.3%	4.3%
Workers	0.8%	0.8%	0.8%	0.8%
<b>Total Non-Government</b>	<b>39.2%</b>	<b>36.9%</b>	<b>36.9%</b>	<b>36.9%</b>
<b>Total Payor Mix</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Ex. D, p. 68.

Financial Considerations

56. According to Applicants, Tenet's financial resources, access to capital and expertise in operating 80 hospitals in 14 states will positively affect the provision of health care in Waterbury. These capabilities will provide the Hospital with the financial resources to

purchase new technology, upgrade the physical plant and attract more skilled physicians. In addition, as an operator of 80 hospitals, Tenet will introduce practices that will reduce costs and improve care by sharing its best practices. Ex. JJJ, p. 1955.

57. Listed below are some of the ways in which Vanguard (now Tenet) provides support through national and regional teams to improve the financial performance of its hospitals. Ex. D, pp. 18-19.

<b>Revenue Cycle</b>	To leverage scale, reduce redundancy, improve efficiencies and lower collection costs, Vanguard is currently in the process of centralizing certain aspects of its revenue cycle operations.
<b>Human resources / employment matters / benefit program cost savings</b>	The human resources function at Vanguard is led by a team in Nashville with local market leadership and infrastructure in each of its hospitals. The corporate team is responsible for establishing policy, developing consistent benefit plans and providing support and guidance in a consistent and efficient manner. Their responsibility is to stay current with all applicable laws and regulations and to make certain that Vanguard hospitals and related businesses have policies and procedures in place to make certain that they remain in compliance with existing laws and regulations.
<b>Liability and other insurance</b>	<p>Risk Management at Vanguard is led by a corporate team that provides direction on all risk management activities. This team manages all litigation in a highly efficient manner.</p> <p>Vanguard's approach to risk management is to be proactive and to prevent claims from occurring. Risk management teams in local markets and hospitals work closely with their respective quality and clinical leaders to prevent events from occurring.</p>
<b>Purchasing / supply costs</b>	As would be expected with a company of Vanguard's size, purchasing power allows Vanguard to keep supply costs low. In conjunction with Vanguard's group purchasing organization, it is always seeking ways to lower supply costs. On a national scale, Vanguard has been able to standardize purchases on a number of commodity items leading to very favorable pricing. On physician preference items, such as implants and devices, Vanguard has taken aggressive approaches to standardization and receives substantial discounts on these items.



<b>Legal Services</b>	A team of experienced lawyers resides in Nashville to serve Vanguard hospitals and related businesses. The approach to legal services is to provide as much support “inhouse” as possible in an effort to keep external legal costs down. Areas in which the Vanguard legal team supports local hospitals include human resources and employment matters, operations contracts, physician employment contracts, other physician contracts and issues, acquisitions, regulatory matters, compliance, HIPAA, managed care contracts, accountable care organization matters, real estate, litigation support and information technology contracts.
<b>Process improvement models (e.g., Six Sigma, Lean)</b>	The Program Management Office (PMO) includes individuals who are trained in Lean processes and other skill sets to facilitate process improvement at Vanguard. The PMO is integral to numerous projects throughout the company
<b>Cash, investment management and other corporate treasury functions</b>	The cash management function is centralized in the Nashville office. All deposits from the hospitals and related businesses are swept into the concentration account and any funding needs for payments are pulled from this account as well. Vanguard also has a treasury function which manages investments associated with Vanguard’s captive insurance company and pension plans which were assumed in conjunction with certain acquisitions.

58. As part of the Tenet system, Applicants believe opportunities to regionalize the health care delivery system in the greater Waterbury area will be enhanced, building upon existing initiatives, such as the Heart Center of Greater Waterbury, Inc. and the Harold Leever Regional Cancer Center, Inc., both of which will be transferred to the JV at Closing. Ex. JJJ, p. 1959. The size of the Tenet system will also provide the JV with regional and national scale leverage and resources to meet the health care reform requirements of the Affordable Care Act. Ex. JJJ, p.1958.
59. In addition to Tenet's access to capital and its expertise in operating hospitals across the country, Tenet will be added to state and local tax rolls and will pay taxes. Consequently, the real estate and personal property that will be owned by Tenet and its affiliates will be added to the tax rolls of the communities where the property is located. Ex. JJJ, p. 1956.
60. By entering into the proposed transaction, GWHN will be able to retire its debt and fund its pension plan. In addition, VHS Waterbury will be better positioned to expand cost control initiatives in community-based settings, and remain a lower- cost, high quality provider for the patients in its service area. Ex. JJJ, p.1958. Set forth below are GWHN’s

debt and principal payments without and with the CON for FYs 2014-2017 and its total pension accrued liability for FYs 2011-FY 2014:

Debt Principal Payments	FY 2014	FY 2015	FY 2016	FY 2017
Without CON	\$1,163,408	\$1,166,685	\$94,2200	\$663,600
With CON	\$0	\$0	\$0	\$0

Ex. JJJ, pp. 1871, 1873.

Pension Accrued Liability	FY 2011	FY 2012	FY 2013
Total Amount	(\$10,832,970)	(\$9,045,712)	(\$8,360,540)

Source: GWHN's audited financial statements for FY 2013 and FY 2012 in record at the Office of Health Care Access.

61. Set forth below is year-to-date (for GWHN) and projected (for VHS Waterbury) Operating Income and Revenue over Expenses for FYs 2014-2017:

DESCRIPTION	Year-To-Date	Projections				
	FY 2014 As of (8/31/14)	FY 2014 w/CON	FY 2015 w/CON	FY 2016 w/CON	FY 2017 w/CON	Variance* FY2014-FY2017
<b>Statement of Operations Summary</b>						
Income / (Loss) From Operations	\$205,628	\$779,117	(\$1,749,987)	(\$1,389,435)	(\$962,006)	(\$1,741,123)
Net income (Loss) / Revenue Over/(Under) Expenses	(\$4,741,875)	(\$4,431,765)	(\$6,995,782)	(\$6,793,200)	(\$6,528,506)	(\$2,096,741)

\*Calculated by OHCA

EX.JJ, p.1873; Ex.JJJ, p.2154.

62. In reference to the losses for FYs 2015, 2016 and 2017 depicted above, the Applicants stated that:

- a) The primary factor contributing to the losses projected for operating income relate to decreases in reimbursement from governmental payors, increases in expenses due to inflationary pressures, non-cash depreciation expense, intercompany interest and the Hospital's payment of a management fee. The financial projections are conservative and do not include increased revenues from growth in patient access and services.
- b) The losses from non-operating income relate to the management services expenses paid by the JV to Tenet as provided in Section 3.3(c) of the Contribution Agreement.
- c) Applicants maintain that CON approval for the proposal should be granted despite the cumulative losses presented in the three-year projection period for several reasons:
  - i. Not granting CON approval leaves the Hospital in a deteriorating financial position and presents a challenge for the Hospital as a stand- alone healthcare provider.
  - ii. Reductions in reimbursements and the inability to take advantage of economies

- of scale on operating expenses will precipitate a continuing deterioration in the financial situation of GWHN.
- iii. Also, continued lack of capital access needed to sustain the physical plant and make investments in equipment, IT systems and an ambulatory platform present a serious challenge for the sustainability of the Hospital.
  - iv. The result would likely mean bankruptcy, significant reduction in services and/or closure of the Hospital.
  - v. Assuming the CON is approved, the JV will benefit from operating efficiencies and access to capital that a partner with national scale can offer.
- Ex. JJJ, p. 1969.

63. Applicants' financial assumptions project reductions in the Medicaid Disproportionate Share Hospital (DSH) payments and the updated Medicare Wage Index factor, along with a projected reduction in Other Operating Revenues due to the decline in Meaningful Use incentives. The post-closing plans for the Hospital under the ownership of the JV that have been considered to account for the projected decrease in revenue, losses from operations and deficiency of revenues over expenses with the CON proposal include the following:

- a) Supply chain cost initiative savings from vendors including improved inventory management
- b) Growth of new practices (General Surgery, Endocrinology)
- c) Initiatives in the reduction in the acute care length of stay impacting utilization of resources
- d) Clinical Documentation Improvement (CDI)
- e) Revenue Cycle initiatives, including improvement in point of services collections, improved medical necessity software for denial management, and charge capture initiatives.

Ex. NNN, p.1.

64. The financial projections presented by Applicants include non-cash depreciation from increased capital investments, intercompany interest expense and the management fee. Applicants have represented that the cash flow generated by the JV is sufficient to sustain operations and continue to make investments in both the Hospital's current campus and the proposed ambulatory network. Ex. JJJ, p. 1970.

65. Based upon the projections, the Applicants expect the JV will generate positive income from operations in FY 2019. A table depicting the financial performance of the JV is presented below:

<b>Income from Operations Breakeven Projections</b>	
<b>Fiscal Year</b>	<b>Total (In millions)</b>
FY2014	\$0.8
FY2015	(1.7)

FY2016	(1.4)
FY2017	(1.0)
FY2018	(0.4)
FY2019	0.3

Ex. JJJ, pp. 1968-1969.

66. Additionally, Applicants have represented that the financial projections are conservative and the results over the three-year period post-closing are expected to be more favorable than those presented, as additional operating efficiencies may be realized as the JV further evaluates opportunities. Potential areas for additional operating expense improvement include human resources, legal and compliance, reimbursement, plant operations and information technology. Upon capturing these additional savings, the cumulative loss over the projection period would be significantly decreased. Ex. JJJ, p. 1970.
67. As an affiliate of Tenet, the JV will have access to capital that it would not otherwise have. The cumulative losses from the three-year projection will be supported by the Credit Agreement as referenced in Section 3.3(d) of the Contribution Agreement. Ex. JJJ, p. 1970.
68. It is anticipated by the Applicants that the JV will continue to improve its operating efficiency beyond FY 2017, by leveraging the resources Tenet provides to the JV. Ideally, the Applicants state that the JV would be able to capture additional savings not presented in the financial projections sooner than FY 2017, thereby minimizing any projected loss that would occur beyond FY 2017. Ex. JJJ, p. 1968.

Other Considerations

69. Applicants have stated that the conversion of the Hospital to a for-profit entity will not have a negative impact on the community. Applicants cite to Tenet's experience in acquiring hospitals in other markets such as Detroit, Michigan, and San Antonio, Texas where Applicants state that Tenet's financial strength and extensive experience and expertise led to improved access to care and quality of care, significant and continuing capital investments, and job growth. Ex. JJJ, pp. 1955-1956.
70. According to Applicants, without the proposed joint venture, it is highly unlikely that GWHN will be able to provide services beyond the next five years, leaving the community with a hole in its safety net. The Hospital has an aged and inefficient physical plant, it lacks access to capital, it has experienced declining reimbursement and increased material and personnel costs, which will most likely cause GWHN to experience operating losses that cannot be offset unless GWHN enters into the proposed JV. Ex. D, p. 63.
71. VHS Waterbury will accept all existing contracts with payors and will complete a change of ownership process with commercial payors, as well as the Centers for Medicare and Medicaid Services. Ex. JJJ, p. 1961.
72. In addition, with respect to payors, Tenet expects that the transaction will allow the Waterbury hospitals to harness the efficiencies of common ownership of both facilities becoming part of an entity with lower costs. It is anticipated that these cost savings will be passed on to consumers of health care services. Moreover, Tenet expects that the transaction will allow the Hospital to enter into risk bearing contracts that it will be in an improved position to assume. Ex. JJJ, p. 1967.
73. Tenet has no current plans to raise the Hospital's charges post-closing. Tenet reviews all hospitals charges on an annual basis compared to hospital and industry cost trends. On occasion, Tenet also performs comparative market rate assessments of the service area. Ex. CC, p. 1237.
74. Connecticut Health Care Associates ("CHCA") was granted intervenor status at the public hearing in this matter. CHCA is the union representing over 1500 nurses, medical technicians and other health care workers in Connecticut, with 550 members at Waterbury Hospital. CHCA expressed concern over the proposed transaction with respect to the possibility of post-closing decreases in staffing levels, increasing the utilization of more profitable services at the expense of less profitable services, the purchase of physician practices in the Waterbury area and the outsourcing health care services. Transcript of October 15, 2014 Public Hearing, Testimony of Barbara Simonetta, President of CHCA, pp. 156-165.

75. Applicants have stated that the JV will offer employment to all active employees in good standing as of the Closing Date in positions similar to those then being provided by GWHN. Except as addressed by the terms of applicable collective bargaining agreements, VHS Waterbury will provide such employees with regionally competitive wages and employee benefits comparable to the benefits generally offered to employees of other hospitals owned and operated by Tenet. Ex. JJJ, p. 1968.
76. Applicants have stated that there are no anticipated changes in nurse staffing level or the number of hours worked by other employed or contracted staff at the Hospital (e.g., hospitalists, mid-level providers, therapists, etc.) from FY 2013 levels for the first three years following approval of the proposed transaction. Ex. JJ, pp., 2-3.
77. Tenet and YNHHS developed a Strategic Alliance Agreement (“SAA”) that established a Regional Planning Organization for the purposes of purchasing, owning and operating one or more health care facilities or providers, including providers across the entire continuum of care, including but not limited to acute care providers, skilled nursing facilities, ambulatory surgery centers, physician organizations, home health agencies and other clinical providers of all kinds in the Geographic Region ( the geographic region includes Connecticut, New York, Rhode Island and Massachusetts). Ex. CC, p. 1233.
78. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal’s relationship to any regulations adopted by OHCA. (Conn .Gen. Stat. § 19a-639(a)(1))
79. This application is consistent with the State Health Care Facilities and Services Plan. (Conn. Gen. Stat. § 19a-639(a)(2))
80. The Applicants have established that there is a clear public need for its proposal. (Conn. Gen. Stat. § 19a-639(a)(3))
81. The Applicants have satisfactorily demonstrated that the proposal will financially strengthen the health care system in the state. (Conn. Gen. Stat. § 19a-639(a)(4))
82. The Applicants have satisfactorily demonstrated that the proposal will improve the accessibility of health care delivery in the region, as well as improve the quality and cost effectiveness. (Conn. Gen. Stat. § 19a-639(a)(5))
83. The Applicants have demonstrated that there will be an increase in access to the provision of health care services to the relevant populations and payor mix. (Conn. Gen. Stat. § 19a-639(a)(6))

84. The Applicants have satisfactorily identified the population to be served by the proposal and have satisfactorily demonstrated that this population has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7))
85. The Applicants provided historical utilization of Waterbury Hospital services in the service area that would support this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
86. This proposal does not appear to have an effect on the utilization of existing health care facilities and services in the service area as a result of this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
87. The Applicants have satisfactorily demonstrated that the proposal will not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))

## Discussion

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in Conn. Gen. Stat. §§ 19a-639(a) and 19a-486d(a), as well as input from intervenors and the community that will be impacted by the proposal. The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

The current proposal before OHCA involves the conversion of a non-profit hospital to a for-profit entity. Specifically, the Applicants are proposing to form VHS Waterbury as a joint venture company. With the exception of CCGWHN and HAIC, GWHN will contribute all of its assets, including the Hospital, to VHS Waterbury in exchange for a 20% ownership interest in the JV and a commitment to spend not less than \$55 million on capital items and the development and improvement of ambulatory services in the Waterbury area. As part of the transaction, the JV will assume certain pension liabilities and GWHN will retain others. Notably, Vanguard is a for-profit entity which was acquired by another for-profit entity, Tenet, subsequent to this CON application being filed by the Applicants. Consequently, the Hospital and the Hospital Affiliates will become for-profit entities. Following the closing of the proposed transaction, Vanguard intends to transfer its 80% interest in the JV to a to-be-formed subsidiary RPO. This RPO will be a joint venture between Tenet and YNHHSC. A Tenet affiliate will own 80% and YNHHSC will own 20% of the RPO.

### ***The Affected Community Will be Assured of Continued Access to High Quality and Affordable Health Care After Accounting for any Proposed Change Impacting Hospital Staffing.***

In terms of benefits realized by the Hospital, the JV has committed to spending not less than \$55 million on capital items over the next seven years. This will allow the Hospital to retire its current debt obligations and improve its current services by purchasing new technology, upgrading the physical plant, and attracting additional skilled physicians. Clearly, the aforementioned benefits fulfill a public need. Without them, the Hospital would face a precarious financial position and patients would be prevented from receiving care on the most up-to-date technology. In addition, this proposal will allow the Hospital to be better positioned to expand cost control initiatives in community-based settings, and remain a lower-cost, high quality provider for the patients in its service area. However, OHCA must look beyond the surface to ensure that the community served by the Hospital will continue to receive high quality, affordable health care. Currently, the Hospital provides an array of health care services, including a full range of reproductive services, to private pay, commercial pay, indigent and Medicare and Medicaid patients. The JV will operate in accordance with the Community Benefit Standard required of tax-exempt hospitals. Among other things, this means that the Hospital will continue to accept Medicare and Medicaid patients and emergency patients, without regard to ability to pay. In fact, the Applicants testified that Vanguard was chosen as a partner because of its culture of maintaining local health care. Notably, the Applicants represented that they would maintain core, existing service lines for a period of ten years. In order to ensure that no service lines are eliminated, not just those that are core, OHCA has conditioned the approval of this



CON application on a commitment by the Applicants to refrain from eliminating or reducing any existing service lines for specific time periods.

In reviewing a proposal such as this one, it is important to consider not just maintaining the current services, but looking towards the future to identify what Tenet can offer the Waterbury community in terms of expanding accessibility to health care. Namely, what does the Waterbury community need in terms of health care services not currently offered by the Hospital? To answer this question, the Hospital participates in the Waterbury Community Health Needs Assessment or CHNA, which identifies the health priorities within the community. For the Waterbury community, these include reducing barriers to care, including costs, the provision of mental health and substance abuse services, addressing obesity, and tobacco use. While the Applicants have stated their commitment to continue the Hospital's involvement in and commitment to the CHNA and its principles, they also testified that they have no strategic plan in place for the Waterbury community or the Hospital. It is difficult to understand how a proposal of this magnitude could be initiated, much less consummated, without a strategic plan in place. In order to address this discrepancy, the Applicants are required to establish a Community Advisory Board ("CAB") composed of individuals that represent the diverse Waterbury community. The CAB will perform various oversight and advisory functions as set forth in the conditions set forth below and serve as an advisor to the Board of Directors of the JV. Generally speaking, the CAB will advise the JV Board on health needs identified for the Waterbury community and provide recommendations for satisfying those needs. Additionally, VHS Waterbury must participate in future CHNAs and confer with the CAB prior to finalizing its strategy to meet the needs identified. OHCA also requires that the JV maintain relationships with community-based organizations in order to address mental health and substance abuse issues in the community through participation in annual forums.

From a quality standpoint, GWHN chose to continue partnering with Tenet after its acquisition of Vanguard based on Tenet's focus on quality, safety and best practices, including access to Tenet's quality and patient safety programs that utilize coordinated initiatives targeting discharge planning, care management, service line planning and emergency preparedness. As an operator of 80 hospitals throughout the country, Tenet has extensive experience and expertise that will allow the Hospital to take advantage of practices that will reduce costs and improve care by sharing Tenet's best practices. Moreover, it is anticipated that the previously-mentioned alliance with YNHHSC will benefit the Hospital by allowing access to YNHHSC's clinical protocols, evidenced based practices, subspecialists and clinical intellectual property. In order to ensure that best practices are followed and quality improvements are made by the JV, this approval is conditioned upon the Applicants providing an Independent Monitor with a Quality Assurance and Performance Improvement Plan for the Hospital, along with various reports to monitor the Hospital's adherence to the Plan.

OHCA firmly believes that all of the foregoing could not be accomplished without a dedicated group of physicians and staff to fulfill the community's health care needs. At the public hearing in this matter, the Applicants stressed the importance of recruiting new physicians to ensure the continued provision of high quality health care. The Applicants also represented that they did not anticipate any changes in nurse staffing levels for the first three years following approval of this proposal. In order to stress the importance of the representation, this approval is conditioned

upon the Applicants maintaining current clinical care work force levels for a period of five years, along with a report of physician recruitment priorities and a timeline for achieving those priorities.

Certainly, the affordability of health care is an important aspect of the Applicants' proposal. Specifically, this requires OHCA to consider the cost to the patient for services rendered by a hospital. While OHCA understands that there are many variables that make up the final charge to the patient, including payor contract negotiations over which OHCA has no statutory authority or control, this approval is conditioned upon VHS Waterbury maintaining certain pricing levels for the next five years. Beyond that, it is expected that the JV will take every appropriate step to provide affordable health care without affecting quality or accessibility. One of the arguments made in support of this proposal is the ability of Tenet to achieve cost-savings through economies of scale and other efficiencies. Therefore, as a condition of this approval, the Applicants are required to quantify such cost-savings and provide evidence of how the JV is positively impacting the availability and quality of health care services offered to the Waterbury community in order to meet its needs.

***The Purchaser has Made a Commitment to Provide Health Care to the Uninsured and the Underinsured.***

The City of Waterbury is a community struggling with high unemployment and poverty rates. In FY 2012, Medicaid recipients accounted for more than 22% of inpatients and 23% of outpatients at the Hospital. Uninsured individuals accounted for nearly 2% of the Hospital inpatients and nearly 4% of outpatients. Therefore, it is important to consider the current charity care policy of the Hospital with that being offered by Tenet. Of concern is that Tenet's charity care policy only applies to those individuals under 300% of the Federal Poverty Level. GWHN's current charity care policy is more favorable in many respects. However, Tenet's charity care policy offers certain advantages over GWHN's. Specifically, under Tenet's policy, patients are not required to apply for financial assistance and they can provide verbal attestation for household size and other nonfinancial aspects. To address these issues, the Applicants have made representations, both at the public hearing and in their Application, that they would adopt whichever charity care policy is more favorable to the patient and will provide financial assistance to underinsured patients on a case-by-case basis. However, the Applicants were vague in terms of any specific commitment. Therefore, in order to solidify this commitment, VHS Waterbury is required to adopt whichever charity care and financial assistance policies that are the more generous and benevolent and submit final copies of same to OHCA and the Independent Monitor. This will provide the community with transparency regarding the Hospital's charity care policies that are necessary to secure the provision of health care services to all residents of the Hospital's service area, including the uninsured and underinsured.

As previously discussed, the JV will operate in accordance with the Community Benefit Standard. Among the advantages of doing so is the promotion of public health, wellness and welfare in the Waterbury community through the provision of health care at a reasonable cost. As a condition of this approval, the JV is required to enter into a Community Benefit Agreement with other local organizations for the purposes of continuing to facilitate and support the development of CHNAs and other community building activities in the Waterbury community that should help facilitate increased access to health care services.

***The Purchaser has Safeguards in Place to Avoid a Conflict of Interest in Patient Referral, if Health Care Providers or Insurers Will be Offered the Opportunity to Invest or Own an Interest in the Purchaser or an Entity Related to the Purchaser.***

In evaluating the existence of safeguards to avoid conflicts of interest in patient referrals, OHCA reviewed the ownership structure of Vanguard and Tenet along with the investment opportunities available to health care providers and insurers in the GWHN service area.

GWHN is a Connecticut non-stock, 501(c)(3) corporation which hold interests in numerous entities and joint ventures. Its principal asset is the Hospital. Vanguard is a for-profit company based in Nashville, Tennessee. At the time of the initial filing of this Application, Vanguard had almost \$6.0 billion in net revenue and owned and operated 28 acute care and specialty hospitals with complementary facilities and services in Arizona, Illinois, Massachusetts, Michigan and Texas. During the review period of this Application, Vanguard was acquired by Tenet. Tenet is a for-profit, investor-owned health care services company. As of June 26, 2014, inclusive of the acquisition of Vanguard which occurred on October 1, 2013, Tenet owns and operates 80 acute-care hospitals in 14 states and 189 outpatient centers in 16 states. Tenet also operates health plans in some of its markets in the U.S., but has not indicated any intention to do so in connection with this proposal.

The Applicants' Application, as well as their testimony at the Public Hearing, is void of any discussion with regard to safeguards that are currently in place, or that will be put in place, to avoid conflicts of interest in patient referrals. As a result, OHCA has conditioned its approval on the development of the CAB as an advisor to the JV, including having the Chair of the CAB serve as an ex-officio member of the JV Board without vote to help ensure that such conflicts do not arise.

***Certificate of Need Authorization is Justified in Accordance with Chapter 368z.***

As part of the review process set forth in Conn. Gen. Stat. § 19a-486d(a), OHCA must consider whether certificate of need authorization is justified given the criteria set forth in Conn. Gen. Stat. § 19a-639(a). The discussion up to this point has addressed many of the criteria dealing with clear public need, quality of care, and access to services.

We now turn to the financial feasibility of the proposal. Throughout the Application process and the public hearing, the Applicants discussed Tenet's capital, and access to capital, along with increased efficiencies and economies of scale leading to reduced costs, all of which are benefits that the Applicants claim GWHN would not realize if this proposal were denied. GWHN has experienced various financial difficulties over the past several years. GWHN experienced five consecutive years of losses from 2006 through 2011; defaulted in its bond covenants in 2009; and identified over \$50 million in capital improvements required over 5 years to keep the Hospital operational. However, GWHN does not have and cannot secure, in the open market, the funds required to complete the required capital improvements. To facilitate these improvements, the JV has committed to spending not less than \$55 million on capital items over the next seven years. Moreover, the financial projections provided by the Applicants were conservative and did

not include growth in revenue or cost savings associated with the \$55million capital investment. As a result, OHCA was not afforded the opportunity to completely review the impact on the Waterbury community from the capital investment. Consequently, OHCA is requiring that VHS Waterbury report regularly on these activities and submit semi-annual financial reports that will allow OHCA to monitor the growth in revenue, cost savings, and impact on health care services associated with the \$55 million capital investment.

## Order

Based upon the foregoing Findings of Fact and Discussion, I respectfully recommend that the Applicants' request to transfer substantially all of the assets of GWHN, including the assets of The Waterbury Hospital, to a for-profit joint venture be **Approved** under Conn. Gen. Stat. §§ 19a-486 and 19a-639 subject to the following conditions:

### General Conditions

1. Unless expressly provided otherwise, all conditions of this Order (referred to herein as the "Conditions") shall, to the extent applicable, be binding on the Applicants, their successors and assigns, and the proposed joint venture entity, VHS Waterbury, and its successors and assigns, regardless of whether GWHN or its successor, the Foundation remains a member of VHS Waterbury. VHS Waterbury shall directly own and operate the Hospital and be the holder of the Hospital's license post-closing as proposed in the CON application.
2. Unless expressly provided otherwise or there is a change in law that would render any Condition of this Order unenforceable, a request for modification must be submitted and approved as required by C.G.S. §4-181a to change or eliminate any Conditions set forth herein.
3. The Department of Public Health (the "Department") and any successor agency shall have the right to enforce the Conditions by all means and remedies available to it under law and equity, including, but not limited, Conn. Gen. Stat. § 19a-486g and the right to impose and collect a civil penalty under Conn. Gen. Stat. § 19a-653 against any person or health care facility or institution that fails to file required data or information within the prescribed time periods set forth in this Order.
4. Applicants shall notify OHCA in writing of the Closing Date of the change of ownership transaction authorized by this Order within five (5) days of such closing. All references to days in these Conditions shall mean calendar days.
5. Applicants shall submit to OHCA certain information as required by these Conditions on an annual basis (the "Annual Report") up to and including the seventh (7<sup>th</sup>) anniversary of the Closing Date. The Annual Report shall be furnished to OHCA within thirty (30) days of each anniversary of the Closing Date with a copy provided to the Independent Monitor (as described below) for as long as the Monitor is engaged pursuant to Conditions 7 and 8 below.

6. All reports and other information required to be posted on VHS Waterbury's Website Page (as defined below) shall remain posted until the seventh (7<sup>th</sup>) anniversary of the Closing Date except to the extent they are superseded or otherwise rendered inaccurate by subsequent reports and/or information required to be posted pursuant to these Conditions.

Independent Monitor

7. Within ninety (90) days of the date of OHCA's Final Decision in this matter but in no event later than the Closing Date, Vanguard or an affiliate shall contract with an Independent Monitor who has experience in health care administration and regulation. The Independent Monitor shall be retained at the sole cost of Vanguard and be responsible for monitoring the Applicants' compliance with the various Conditions set forth in this Order.
8. The Department must approve the Independent Monitor prior to the execution of the contract between the Independent Monitor and Vanguard or its affiliate. The duties of the Independent Monitor may be extended to include similar monitoring of other Vanguard-owned hospitals in the State of Connecticut. The Independent Monitor's functions under this Order shall be provided for a period of five (5) years following the Closing Date.
9. The Independent Monitor shall, at a minimum, conduct periodic on-site visits of VHS Waterbury and its affiliated clinical facilities to review and assess compliance with the Conditions and shall furnish a written report to OHCA regarding this assessment within (30) days of the completion of each on-site review. These reviews, which may also be supplemented by appropriate document reviews performed by the Independent Monitor remotely, shall take place quarterly for the first year following the Closing Date and every six (6) months thereafter for the balance of the Monitor's engagement by Vanguard or its affiliate.
10. The contract with the Independent Monitor shall provide that the Independent Monitor have face-to-face meetings with OHCA and require the Independent Monitor to perform additional periodic reviews as OHCA deems necessary in its sole discretion. VHS Waterbury shall be copied on all written reports that the Independent Monitor furnishes to OHCA and these reports shall be simultaneously posted on OHCA's website and VHS Waterbury's website upon their submission.
11. All postings on the VHS Waterbury website required by this Order shall be posted to a designated and prominently displayed portion of VHS Waterbury's website that shall be

named the “Certificate of Need Conditions Page” (referred to herein as the “Website Page”) for purposes of making this information available to the public.

12. Vanguard shall provide the Independent Monitor with appropriate access to the applicable records of VHS Waterbury and its affiliates in order to enable the Independent Monitor to fulfill its functions under this Order.

### Services

13. For five (5) years following the Closing Date, there shall be no reduction or relocation of any inpatient or outpatient services by VHS Waterbury from those that exist at the Hospital on the date of OHCA’s Final Decision in this matter. A reduction in service shall constitute any reduction in allocated beds, hours of operation, staffing or any other act or omission by VHS Waterbury that reduces access to care on more than a temporary basis. Within ten (10) days following on the date of OHCA’s Final Decision in this matter, Applicants shall submit schedules to OHCA setting forth the Hospital’s inpatient bed allocation and hours of operation of all outpatient services as of the Effective Date and, on the Closing Date, publish this same information on the Website Page.
14. For seven (7) years following the Closing Date, VHS Waterbury shall not terminate (i) any of the Essential Services identified in Schedule 1.30 of the Amended and Restated Operating Agreement for VHS Waterbury Health System, LLC (the “Operating Agreement”) – these being Emergency Services, General Medical Services, Inpatient and Outpatient Surgery, Inpatient and Radiology and Diagnostic Services, Obstetrics, Comprehensive Cardiology Services, Intensive Care Services and Neonatal Intensive Care Services or (ii) any of the Women’s Services identified in Applicants’ Late File Exhibit No. 7.

### Staffing

15. For five (5) years following the Closing Date, VHS Waterbury shall not reduce its clinical work force below the staffing levels for the Hospital set forth in Exhibits 1 and 3 (the “Staffing Level Exhibits”) found at Exhibit JJ in the Table of the Record in terms of either the number of full time equivalents (“FTEs”) employed by or contracted with the VHS Waterbury or the proportion of clinical work force members holding various licenses/certifications (e.g., the proportion of RNs to LPNs to Nurses’ Aides). VHS Waterbury shall post the Staffing Level Exhibits along with a narrative explanation to assist the public in interpreting them on the Website Page on the Closing Date.
16. To ensure compliance with Condition 15, for five (5) years following the Closing Date, VHS Waterbury shall include in the Annual Report, the Updated Staffing Schedules set

forth at Attachment I hereto. The Updated Staffing Schedules shall be accompanied by a narrative explanation of any differences or deviations from the Staffing Level Exhibits, including, but not limited to, a description of any new contract or outsource arrangements for clinical care staff occurring over the past year. The Updated Staffing Schedules along with the narrative required by this Condition shall be posted on the Website Page simultaneously with the submission of the Annual Report.

### Governance

17. Within sixty (60) days of the date of OHCA's Final Decision in this matter, Applicants shall form a Community Advisory Board ("CAB") and assist it in performing various advisory functions after the Closing Date as set forth below. The membership of the CAB shall reflect the racial, ethnic, economic and cultural diversity of the communities served by VHS Waterbury and be comprised of at least eleven (11) and no more than twenty (20) persons.
18. In forming the CAB, Applicants shall solicit in writing the following organizations from The Greater Waterbury Health Improvement Partnership to recommend individuals to serve as initial members of the CAB: the Waterbury Department of Public Health, the City of Waterbury, the Staywell Health Center, the Connecticut Community Foundation, Community Health Center, Inc. and the United Way of Greater Waterbury (collectively, the "CHNA Partners") provided, however (i) no more than two (2) members of the initial CAB shall be employees of any single CHNA Partner; (ii) all of the members possess a background in health care, charity care, advocacy for the medically underserved or have other experience that shall enable them to contribute to the fulfillment of the purposes of the CAB; and (iii) none of the members shall have served as a director, officer or employee of the Applicants, VHS Waterbury or St. Mary's Hospital or any of their affiliates within the past two (2) years.
19. Within 90 days of the date of OHCA's Final Decision in this matter but in no event later than the Closing Date, Applicants shall submit the names and qualifications of the initial CAB members to OHCA along with the written solicitations to the CHNA Partners and any other correspondence concerning the formation of the CAB that demonstrates a wide cross section of the community was approached to participate on the CAB. A listing of the CAB members shall be posted on VHS Waterbury's Website Page on the Closing Date along with a telephone number and email address allowing members of the public to reach the CAB. After the initial appointment of its members, members of the CAB may be added or removed only in accordance with the CAB's Bylaws.



20. For seven (7) years following the Closing Date, Vanguard shall fund all reasonable expenses incurred by the CAB in carrying out its responsibilities under this Order, including, but not limited to, paying the attorney's fees resulting from the drafting of its Bylaws as well as a Conflicts of Interest Policy. Vanguard shall also be responsible for providing the CAB with appropriate meeting space when requested and offering other organizational support as may reasonably be required to carry out its functions. At the conclusion of the seven-year period set forth in this Condition, the CAB shall be responsible for funding its own expenses.
21. The CAB shall convene its first meeting within ninety (90) days following the Closing Date and shall meet at least quarterly thereafter. At least thirty (30) days prior to the CAB's first meeting, the proposed Bylaws and Conflicts of Interest Policy of the CAB shall be submitted to OHCA for review and approval. The CAB shall submit its meeting minutes to the Independent Monitor within thirty (30) days of each meeting.
22. The CAB shall perform the following functions:
  - a. Advising the Board of Directors of VHS Waterbury (the "JV Board") on the health care needs of the Greater Waterbury area;
  - b. Participating in the development of the Greater Waterbury CHNA;
  - c. Identifying strategies, programs and services to address unmet health needs of the communities served by VHS Waterbury;
  - d. Evaluating VHS Waterbury's implementation strategies and other efforts of VHS Waterbury focusing on those needs; and
  - e. Meeting with the Independent Monitor at least twice each year to discuss the compliance by VHS Waterbury with the Conditions set forth in this Order.
23. The CAB shall meet with the JV Board at least two (2) times per year at approximately six (6) month intervals and VHS Waterbury shall require the CAB to submit written recommendations to the JV Board in advance of such meetings regarding how VHS Waterbury can better address the health care needs of the Greater Waterbury area. The JV Board shall consider each written recommendation made by the CAB and use its reasonable best efforts to incorporate the recommendations of the CAB into its planning efforts and strategies. Minutes of each meeting of the JV Board with the CAB, which shall include a discussion of each CAB recommendation submitted for the meeting, shall be given to the Independent Monitor within thirty (30) days following the meeting date and simultaneously posted by VHS Waterbury on its Website Page.
24. In order for the CAB to fulfill its responsibilities, the JV Board shall provide the CAB with all information the CAB reasonably deems necessary to make informed

recommendations. If the JV Board fails to meet with the CAB on the schedule set forth herein, or if a majority of the CAB vote that VHS Waterbury is not making good faith efforts to keep the CAB informed and/or meet the needs of the Greater Waterbury community, the CAB may express these concerns in writing to OHCA.

25. The Chair of the CAB shall serve as a non-voting, ex-officio member of the JV Board and the JV Board shall not change the duties or delegation of authority to the Board of Trustees of VHS Waterbury as set forth in Section 5.3 of the Operating Agreement without prior review by OHCA.
26. Applicants shall use commercially reasonable best efforts to appoint members who reflect the community's racial, ethnic and cultural diversity to (a) the JV Board, (b) the Board of Trustees, and (c) executive and other supervisory positions within VHS Waterbury.

#### Community Benefits

27. VHS Waterbury shall at all times adhere to the Standards as defined in Section 2.6 of the Operating Agreement, including, but not limited to, satisfying the community benefit standards set forth in IRS Revenue Ruling 69-545, as modified and amended, and complying with the requirements of Section 501(r)(3) - (6) of the Internal Revenue Code with respect to conducting a periodic CHNA and creating an implementation strategy.
28. VHS Waterbury shall, within ninety (90) days of the Closing Date, enter into a Community Benefit Agreement with the CHNA Partners (either jointly or severally) committing to fund and organize future CHNAs in the same manner and to the same degree as the Hospital did the most recently completed CHNA. In order to facilitate compliance with this Condition, Applicants shall submit a report to OHCA within ninety (90) days of the date of OHCA's Final Decision in this matter describing the amount of funding and level of involvement of the Hospital in the most recent CHNA. As part of the Community Benefit Agreement, VHS Waterbury shall also commit to the following:
  - a. Providing all demographic, epidemiologic and other information that it keeps in the ordinary course as the CHNA Partners may reasonably deem necessary to conduct, develop and update the CHNA;
  - b. Collaborating with and assisting other health care providers and community-based organizations in conducting outreach programs to educate service area residents on the needs identified in the CHNA;
  - c. Conferring with the CHNA Partners and the CAB before finalizing its CHNA implementation strategy.

29. For seven (7) years following the Closing Date, VHS Waterbury shall expend, for purposes of financial assistance and community building activities, amounts equal to those listed in each line item of Schedule H, Part 1, Section 7 (Financial Assistance) and Schedule H, Part II (Community Building Activities) as set forth in the Hospital's IRS Form 990 for the 2013 tax year (and as replicated at Ex. JJJ of the Table of Record, pps. 1964 and 1966, respectively) plus an amount equal to one (1) percent of the total expenditure for all line items compounded annually. A report prepared by VHS Waterbury's independent accounting firm confirming these expenditures and listing the activities associated with each line shall be provided in the Annual Report and posted on VHS Waterbury's Website Page simultaneously with the submission of the Annual Report.
30. For five (5) years following the Closing Date, VHS Waterbury shall maintain itemized pricing levels for its medical services (including the cost of medical supplies and pharmaceuticals) that do not exceed the current pricing levels published on the Hospital's pricemaster on file with OHCA. The Independent Monitor shall be provided with a copy of the Hospital's current pricemaster and be provided access to applicable records of VHS Waterbury as necessary to ensure compliance with this Condition.
31. In recognition of the need to maintain and strengthen mental health and substance abuse services in the Greater Waterbury area, VHS Waterbury or an affiliate shall host an annual forum to which all providers of these services in VHS Waterbury's service area shall be invited. The focus of the annual forum shall be improving services by creating or expanding collaborative arrangements among the forum participants. The first of these forums shall be held within one (1) year of the Closing Date and annually thereafter for four (4) years. VHS Waterbury or its affiliate shall provide the Independent Monitor with no less than thirty days' notice of the time and place of each meeting. VHS Waterbury shall also provide the Independent Monitor with a summary of the results of the meeting within thirty (30) days of the meeting date while simultaneously posting the summary on its Website Page.

#### Quality Improvement

32. Within one hundred and fifty (150) days following the Closing Date, VHS Waterbury shall submit to the Independent Monitor:
- a. A copy of its Quality Assurance and Performance Improvement ("QAPI") Plan;
  - b. A list of best practices for the Essential Services as identified in the Operating Agreement;

- c. An overview of the quality improvements VHS Waterbury seeks to make in the first five (5) years following the Closing Date; and
  - d. An objective set of criteria by which the quality improvements undertaken pursuant to subsection (c) of this Condition can be measured.
33. For five (5) years following the Closing Date, VHS Waterbury shall ensure that it is registered and submits all data necessary to allow for it to become a full participant in the LeapFrog Program so that it may acquire a LeapFrog Hospital Safety Score. VHS Waterbury shall submit its Leap Frog Scores to the Independent Monitor upon receipt and simultaneously publish them on its Website Page.

Capital Commitment

34. Within one hundred and fifty (150) days following the Closing Date, VHS Waterbury shall submit to OHCA its seven (7)-year strategic plan ("Strategic Plan") to spend no less than \$55 million on capital projects involving hospital infrastructure and the development and improvement of ambulatory services in the Greater Waterbury community over the same period. The Strategic Plan shall account for the expenditure of the full \$55 million and include the following:
- a. A list of planned capital expenditures with detailed descriptions and associated estimated costs;
  - b. A timeframe for the roll out of the capital projects (including estimated beginning, ending and startup/operation dates); and
  - c. A reconciliation of the capital expenditures with the list of capital expenditures/priorities submitted by Applicants as part of their Late File Exhibits 2 and 3.
35. The Strategic Plan shall be approved by OHCA and VHS Waterbury shall take all reasonable steps to fully implement the Strategic Plan as approved by OHCA.
36. VHS Waterbury shall submit written reports updating the implementation of the Strategic Plan in each Annual Report submitted under this Order. Such reports shall describe all activities and expenditures undertaken as part of the Strategic Plan, including but not limited to, a description of the capital project, the dates and amounts of withdrawals from the Hospital's operating account and/or borrowing against the \$55 million line of credit used to fund the capital project. The reports shall be signed by VHS Waterbury's Chief Financial Officer.

Financial Conditions

37. For five (5) years following the Closing Date, VHS Waterbury shall file the following information with OHCA on a semi-annual basis (for purposes of this Order, semi-annual periods are October 1- March 31 and April 1 - September 30). The required information is due no later than two (2) months after the end of each semi-annual period. Due dates are May 31<sup>st</sup> and November 30<sup>th</sup>. Beginning May 31, 2015:

- a. The cost saving totals achieved in the following Operating Expense Categories: Salaries and Wages, Fringe Benefits, Contractual Labor Fees, Medical Supplies and Pharmaceutical Costs, Depreciation and Amortization, Bad Debts, Interest Expense, Malpractice Expense, Utilities, Business Expenses and Other Operating Expenses. The categories shall be consistent with the major operating expense categories (Categories A,B,C,D,E,F,G,H,I,J, and K) which are in use at the time of reporting in the OHCA Hospital Reporting System ("HRS") Report 175 or successor report. The information shall also contain narratives describing:
  1. the major cost savings achieved for each expense category; and
  2. the effect of these cost savings on the clinical quality of care.
- b. A consolidated Balance Sheet, Statement of Operations, and Statement of Cash Flows for VHS Waterbury. The format shall be consistent with that which is in use at the time of reporting in OHCA's HRS Reports 300/100 and Reports 350/150 or successor reports for the Balance Sheet and Statement of Operations. The Statement of Cash Flows format should be in Excel and consistent with that which is in use by Tenet in their 10-K and 10-Q financial reporting.
- c. A completed Hospital Gross Revenue, Net Revenue and Statistics by Payor report for the Hospital. The format shall be consistent with that which is in use at the time of reporting in OHCA's HRS Report 165 or successor report.

38. For five (5) years following the Closing Date, VHS Waterbury shall submit to OHCA a financial measurement report. This report shall be submitted on a semi-annual basis and show current month and year-to-date data, and comparable prior year period data for the VHS Waterbury. The required information is due no later than two (2) months after the end of each semi-annual period. Due dates are May 31st and November 30th, beginning May 31, 2015. The following financial measurements/indicators should be addressed in the report:

**Monthly Financial Measurement/Indicators**

<b><u>A. Operating Performance</u></b>
a. Operating Margin
b. Non-Operating Margin
c. Total Margin
d. Bad Debt as % Gross Revenue
<b><u>B. Liquidity</u></b>
a. Current Ratio
b. Days Cash on Hand
c. Days in Net Accounts Receivables
d. Average Payment Period
<b><u>C. Leverage and Capital Structure</u></b>
a. Long-term Debt to Equity
b. Long-term Debt to Capitalization
c. Unrestricted Cash to Debt
d. Times Interest Earned Ratio
e. Debt Service Coverage Ratio
f. Equity Financing Ratio
<b><u>D. Additional Statistics</u></b>
a. Income from Operations
b. Revenue Over/(Under) Expense
c. Patient Cash Collected
d. Cash and Cash Equivalents
e. Net Working Capital
f. Unrestricted Assets
g. Credit Ratings (S&P, FITCH and Moody's)

39. For each of its first seven (7) fiscal years following the Closing Date, VHS Waterbury shall submit to OHCA copies of its operating and capital expenditures budget plans. These reports shall be submitted with the Annual Report.

Charity Care

40. VHS Waterbury shall adopt whichever charity care and financial assistance policies, as between Tenet and GWHN that are the more generous and benevolent to the public and submit final copies of same to OHCA and the Independent Monitor within thirty (30) days following the Closing Date. These policies shall also be posted on VHS Waterbury's Website Page upon their adoption.
41. For seven (7) years following the Closing Date, VHS Waterbury shall provide written notice to OHCA and, for as long as each is performing functions pursuant to this Order,

to the CAB and to the Independent Monitor, of any modification, amendment or revision to its charity care and financial assistance policies within five (5) days of such change. The notice of these changes shall be accompanied by copies of any revised policies and the notice and revised policies shall be posted on VHS Waterbury's Website Page simultaneously with their submission to OHCA.

42. For five (5) years following the Closing Date, VHS Waterbury shall provide at least as much free and discounted care (collectively, "Uncompensated Care") on an annual basis as the Hospital provided in FY 2013 plus an upward adjustment of one (1) percent of such amount compounded annually. These annual Uncompensated Care amounts shall be verified in a written report signed by VHS Waterbury's Chief Financial Officer that shall be included in the Annual Report. The annual Uncompensated Care amounts shall be simultaneously posted on VHS Waterbury's Website Page at the time the Annual Report is submitted.

#### Miscellaneous

43. VHS Waterbury shall ensure that culturally and linguistically appropriate services are available and integrated throughout its hospital operations, including appropriate interpreter and insurance navigator services for patients, English as a second language training for employees, and cultural competency training for employees. In complying with this Condition, VHS Waterbury shall be guided by the culturally and linguistically appropriate standards published by the U.S. Department of Health and Human Services' Office of Minority Health. For five (5) years following the Closing Date, VHS Waterbury shall submit a written report on its activities directed at meeting this Condition as part of the Annual Report. The written report shall be posted on VHS Waterbury's Website Page simultaneously with the submission of the Annual Report.
44. For five (5) years following the Closing Date, VHS Waterbury or an affiliate, in conjunction with the CAB, shall hold an annual town hall meeting in which it shall present information about the services it provided in the previous year and take questions and comments from the public on how these services can be improved. The meeting shall be held at a time and place designed to allow as many members of the communities served by VHS Waterbury as possible to attend. Minutes of the meeting shall be furnished to the Independent Monitor and posted on VHS Waterbury's Website Page within thirty (30) days of the meeting date.
45. Within one hundred and fifty (150) days following the Closing Date, VHS Waterbury shall provide the Independent Monitor with a list of physician recruitment priorities for the next five (5) years broken out by specialty for the Greater Waterbury community and a timeline for achieving each priority (the "Physician Recruitment Plan"). Thereafter, for five (5) years and within thirty (30) days of the end of its fiscal year, VHS Waterbury

shall provide the Independent Monitor a written progress report assessing its performance with respect to carrying out the Recruitment Plan.

46. Vanguard shall file with OHCA for review, within ten (10) days of execution, any and all agreements related to the Strategic Alliance Agreement entered into between Tenet and YNHHS including but not limited to:

- a, the Operating Agreement or similar agreement for the Regional Provider Organization ("RPO"); and
- b. any agreement between the RPO and any licensed health care provider and/or medical foundation in Connecticut.

47. The Applicants shall submit to OHCA and the Independent Monitor within thirty (30) days after the Closing Date, final executed copies of the Contribution, Operating and Management Agreements attached as Exhibits 1-3 of Exhibit D in the Table of Record.

Respectfully submitted,

Date

12/1/14

  
Kevin T. Hansted  
Hearing Officer